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Federal Communications Commission

DA 00-394

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Amendment of Section 73.202(b),)	
Table of Allotments,)	
FM Broadcast Stations.)	
)	
(Jenner, California))	MM Docket No. 00-33
)	RM-9816
)	
(Culver, Indiana))	MM Docket No. 00-34
)	RM-9817
)	
(Lake Isabella, California))	MM Docket No. 00-35 ✓
)	RM-9818

NOTICE OF PROPOSED RULE MAKING

Adopted: February 16, 2000

Released: February 25, 2000

Comment Date: April 17, 2000

Reply Date: May 2, 2000

By the Chief, Allocations Branch

1. Before the Commission for consideration is a multiple docket Notice of Proposed Rule Making setting forth separate proposals to amend the FM Table of Allotments, Section 73.202(b) of the Rules. Each petitioner has stated that it will apply for its requested channel, if allotted. We believe that each proposal warrants consideration because it complies with our technical requirements and would serve the public interest.

2. This is a multiple docket Notice of Proposed Rule making issued in response to a Commission Public Notice released October 2, 1998 (DA 98-1987). We are combining separate FM allotment proposals into a single Notice of Proposed Rule Making. Each proposal has its own docket and rule making number and the Commission's Reference Center will maintain a separate file for each docket. As discussed in the Public Notice, this procedure will conserve Commission resources and expedite the processing of FM allotment petitions for rule making by avoiding duplicative actions. We request comments and/or counterproposals to the following proposals:

(1) MM Docket No. 00-33, RM-9816**Petitioner:** Brian Costello

c/o Brian Costello
15275 Old Cazadero Road
Guerneville, CA 95446

Proposal: Allot Channel 292A to Jenner, California, as that locality's first local aural transmission service.

<u>Community</u>	<u>Present</u>	<u>Proposed</u>
Jenner, California	--	292A

Coordinates: 38-30-55 NL; 123-11-45 WL

Additional Information: This proposal requires a site restriction 10.1 kilometers (6.3 miles) northwest of Jenner to avoid a short spacing to Station KMEL(FM), Channel 291B, San Francisco, California, at coordinates 37-41-24 NL; 122-26-13 WL. Petitioner provided a background of Jenner's importance in the development of Sonoma County in the past, stating that it was the center of logging and the timber industry for the entire region, as was an important location for the fishing industry as well. Petitioner advises that Jenner has a population of 200 people as reported in the 1999 Rand McNally Commercial Atlas. Further, Jenner is described as having its own post office (zip code 95450), fire district and fire house. Petitioner reports that Jenner is a popular tourist location with several local lodging and restaurant facilities. Additionally, petitioner states that Jenner appears on all local maps of the area and is indicated on mileage postings along California Highway 116 as well as Coastal Highway 1, both of which petitioner describes as important arteries that connect the communities in western Sonoma County. While there are stations located 10 kilometers to the east and southeast of Jenner, petitioner advises that reception of those broadcast services in Jenner is hindered by substantial terrain shielding. Petitioner alleges that its proposal would provide unobstructed service to Jenner while providing emergency notifications and needed communications to other coastal communities that are devoid of local service as well.

As Jenner is not listed in the U.S. Census, we invite comments on this proposal regarding the attributes of Jenner for allotment purposes.

FCC Contact: Nancy Joyner, (202) 418-2180

(2) MM Docket No. 00-34, RM-9817**Petitioner:** Larko Communications, Inc.

c/o James R. Cooke, Esq.
Harris Beach & Wilcox
Suite 300
1776 K Street, N.W.
Washington, DC 20006

Proposal: Allot Channel 252A to Culver, Indiana (pop. 1,404), as the community's first local broadcast service.

<u>Community</u>	<u>Present</u>	<u>Proposed</u>
Culver, Indiana	--	252A

Coordinates: 41-13-04 NL; 86-25-21 WL

Additional Information: No site restriction is required for the proposed allotment. As Culver is located within 320 kilometers (199 miles) of the U.S.-Canada border, the Commission must obtain concurrence of the Canadian government to the proposed allotment of Channel 252A to that community.

FCC Contact: Nancy Joyner, (202) 418-2180

(3) MM Docket No. 00-35; RM-9818**Petitioner:** Dana J. Puopolo

c/o Dana J. Puopolo
2134 Oak St., Unit C
Santa Monica, CA 90405

Proposal: Allot Channel 239A to Lake Isabella, California, a census designated place, as that locality's second local FM transmission service.

<u>Community</u>	<u>Present</u>	<u>Proposed</u>
Lake Isabella, California	283A	239A, 283A

Coordinates: 35-35-11 NL; 118-26-34 WL

Additional Information: No site restriction is required for the proposed allotment.

FCC Contact: Nancy Joyner, (202) 418-2180.

3. Comments, reply comments, counterproposals and other pleadings filed in response to this multiple docket Notice of Proposed Rule Making should reference **only** the specific docket to which the filing pertains. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required in paragraph 2 of the Appendix before a channel will be allotted.

4. Interested parties may file comments on or before April 17, 2000, and reply comments on or before May 2, 2000, and are advised to read the Appendix for the proper procedure. Additionally, a copy of any filing should be served on the petitioner listed for the particular docket.

5. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b) and 73.606(b) of the Commission's Rules, 46 FR 11549, February 9, 1981.

6. For further information concerning a proceeding listed above, contact the FCC contact listed for that proceeding. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no ex parte presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the commission or review by any court. An ex parte presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an ex parte presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an ex parte presentation and shall not be considered in this proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204.(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the Notice of Proposed Rule Making to which this Appendix is attached.

2. Showings Required. Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. Cut-off Procedures. The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules).

(b) With respect to petitions for rule making which conflict with the proposal(s) in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comment herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and Reply Comments; Service. Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the Notice of Proposed Rule Making to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties, must be made in written comments reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, 445 Twelfth Street, SW.; TW-A325, Washington, D, C. 20554.

5. Number of Copies. In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Reference Information Center (Room CY-A257) at its headquarters, 445 Twelfth Street, SW., Washington, D. C.